

O'Brien Memorial, Inc. and Local 627, Service Employees International Union, AFL-CIO, Petitioner. Case 8-RC-14734

August 31, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.¹

¹The sole issue on which review was sought is whether the Regional Director correctly found that the single facility unit sought by the Petitioner was an appropriate unit.

APPENDIX

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service and maintenance employees, including licensed practical nurses, nursing aides/assistants, nursing aide coordinators, assistant nursing aide coordinators, orderlies, dietary aides, cooks, housekeepers, laundry employees, physical therapy aides, occupational therapy aides, infection control aides, activities employees, social service employees, maintenance employees, and medical records employees, employed at the Employer's Masury, Ohio facility but excluding all office clerical employees, administrators, directors of nursing, dietary supervisors, registered dietitians, aides supervisors, housekeeping supervisors, laundry supervisors, and professional employees (including registered nurses), guards, and supervisors as defined in the Act.

6. The Employer is an Ohio corporation engaged in the operation of a nursing home in Masury, Ohio. The owners of this facility, John and Dorothy Masternick, own six additional nursing homes located throughout Northeastern Ohio and Western Pennsylvania. Another corporation owned by the Masternicks, Windsor House, Inc., operates, manages and administers all seven facilities.

In the instant proceeding, the Petitioner seeks to represent a unit limited to the nonprofessional employees working at the O'Brien Memorial facility. The Employer argues that the only appropriate unit must include nonprofessional employees from five of the seven facilities owned by the Masternicks: Omni Manor, Windsor C & D, O'Brien Memorial, Parkside Health Care Center and Northeast Ohio Alzheimer's Research Center. All five homes in question are located within a 20 mile radius.

Windsor House, Inc. (herein Windsor House), located at 101 West Liberty, Girard, Ohio formulates policy and proce-

dures and handles accounting, bookkeeping, payroll, data processing, education and purchasing for each of the nursing homes in question. Windsor House has established job classifications and personnel policies which are common to all of the facilities. Windsor House also determines the wage and benefit levels for each job classification, which is the same at each facility. It also sets staffing requirements for all of the facilities.

The record reveals that each home has a separate administrator, along with a director of nursing and other supervisors, who oversee daily operations at each facility. Interviewing and hiring is done separately at each facility, although applications may be filed at Windsor House for all seven homes. Disciplinary actions are also carried out locally, albeit in accord with the common set of personnel policies. Windsor House officials' involvement in discipline appears to be limited to being consulted in unusual situations and hearing appeals from aggrieved employees. The personnel manual states that such appeals are permitted only in special cases. There is no evidence that Windsor House is involved in minor disciplinary matters. While, as noted above, Windsor House sets staffing levels, the individual homes handle their own scheduling and any changes thereto. Employee training is handled both locally, at the separate homes, and in some group meetings involving employees of several homes, depending upon the type of training involved.

With regard to employee interchange among the five facilities, the Employer submitted a list reportedly showing employee transfers occurring since 1989. It is admitted that one of the alleged transfers involved a supervisor, not an employee. There is insufficient supporting documentation to enable me to ascertain completely which of these were actual transfers, as opposed to quits and rehires. The Employer admits that some of these examples fall into the latter category. Also, the vast majority of the 27 occasions set forth on said list involved transfers between Windsor C & D and its sister facility, Omni Manor, which presents a special situation I will discuss at greater length herein. There is no evidence of temporary interchange between nonsupervisory employees of those facilities, although administrators have substituted for each other on occasion.

Finally, there is little evidence of employee contact among the facilities. The record indicated that employees from all of the nursing homes attended a Christmas party in 1990, but none was held in 1991. There is no evidence of contact on a daily or even weekly basis.

The Board has consistently found a single-facility unit to be presumptively appropriate when there is no history of multi-facility bargaining and the degree of functional integration with other facilities is not sufficient to destroy the separate identity of the facility that the union seeks to represent. *Samaritan Health Services, Inc.*, 238 NLRB 629 (1978); *National G. South, Inc.*, 230 NLRB 976 (1977); and *Saint Anthony Center*, 220 NLRB 1009 (1975). The Board's traditional approach in applying a rebuttable presumption that single-facility units are appropriate in the health care industry was reaffirmed in *Manor Healthcare Corp.*, 285 NLRB 224 (1987).

I have considered the arguments submitted by the Employer in support of its multi-facility unit argument, but find them to be unpersuasive. In *Manor Healthcare Corp.*, supra, the Board made clear that even where several facilities are

physically close together and operated under administrative centralization, with uniform policies for all employees, this would not suffice to refute the single facility unit presumption in the health care field. *Manor Healthcare Corp.*, supra and *Mercywood Health Building*, 287 NLRB 1114, 1116 (1988), establish that there must be substantial evidence of regular contact and interchange between the employees of different facilities for a Petitioner's desire for a single-facility unit to be rejected. Such is not the case in the instant matter. As I noted earlier, there is little or no regular contact between employees of the five facilities. As also noted, many of the alleged transfers involved something less than actual movement of employees directly from one facility to the other. Further, of the 27 examples of transfers noted in the record, all but eight involved movement between Windsor C & D and Omni Manor. In my January 31, 1991 decision, *Omni Manor, Inc., Windsor House C & D*, Case No. 8-RC-14422 I dealt with the issue of whether the nonprofessional employees of Windsor C & D were alone an appropriate unit or, as was then argued by the employer, the employees of Omni Manor must also be included. On record evidence nearly identical to this, I found the petitioned-for unit to be appropriate. I noted therein, in considering evidence of alleged transfers between Windsor House and Omni Manor nearly identical to that submitted in this case that these examples included employees, who after a break in service of one month to four years, sought re-employment at the other facility. Having found this evidence unpersuasive then, I find it no more compelling now. This is particularly true as the number of actual transfers is quite minimal considering they occurred over a three year period and that hundreds of employees have worked at these facilities during that time.

I have considered, but find distinguishable, Board cases supporting multi-facility units which the Employer cited in its post-hearing brief. In each of the cited cases, there was

far greater evidence of employee interchange and centralized control of labor relations than in the instant matter. In *West Jersey Health System*, 293 NLRB 749 (1989), which involved four acute care facilities, the Board found a multi-facility health care unit to be appropriate. However, in that case the degree of employee interchange was more substantial than here, e.g., 147 permanent transfers of employees and supervisors and the regular rotation of 250 other employees in a 14-month period. In addition, job openings were posted on a system-wide basis, and employees could bump other employees at other divisions based on seniority, factors not present in this case. In *Presbyterian/St. Luke's Medical Center*, 289 NLRB 249 (1988), the Board also found a multi-facility health care unit to be appropriate. However, in that case there was significant contact and interchange of employees among the three facilities. Some employees floated among the facilities and other employees could cover for each other on the same job at the other facilities. In addition job openings were posted system-wide. Further, the Board expressly stated therein that, due to a remand from a Court of Appeals, it did not apply its single-facility presumption in reaching this decision. *Id.* at p. 251, footnote 5.

In the present case, although there is a certain degree of administrative centralization, there is little, if any, functional integration. Patient care proceeds independently at each facility, and all day-to-day matters are administered within the separate facilities, albeit under the guidelines established by Windsor. There is relatively infrequent contact between the facilities. Finally, there is no bargaining history, other than my earlier finding that the Omni C & D employees constituted an appropriate separate unit.

Based on the foregoing and the record as a whole, I find that the Employer has failed to rebut the presumption that the single-facility unit petitioned-for is an appropriate unit. Accordingly, I shall direct an election in the single-facility unit.